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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**BILL LEE DORMAN,**

**Petitioner,**

**vs.**

**SHARPE AIR SYSTEMS INC.,  
UNINSURED EMPLOYERS FUND, and  
AMERICAN EMPLOYMENT GROUP,**

**Respondents.**

**ORDER ON MOTIONS  
FOR REVIEW**

**Case No. 04-0664**

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Sharpe Air Systems, Inc. (“Sharpe”) and the Uninsured Employers’ Fund (“UEF”) request review of Administrative Law Judge George's order regarding Bill Lee Dorman’s claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Dorman was injured in a work accident on June 17, 2002. After an evidentiary hearing, Judge George ordered Sharpe, UEF and American Employment Group (“AEG”) to pay Mr. Dorman’s medical and disability benefits, subject to UEF’s right to recover from Sharpe and AEG the amount of any benefits UEF paid on Mr. Dorman’s behalf.

The parties agree that Mr. Dorman is entitled to benefits. However, UEF and Sharpe disagree as to the order in which AEG, Sharpe and UEF should be held liable for payment of those benefits. The UEF contends that it cannot be required to pay any of Mr. Dorman’s benefits unless Sharpe and AEG are both insolvent. Sharpe argues that, if AEG is insolvent, UEF should be required to pay Mr. Dorman’s benefits subject to a right of reimbursement from Sharpe.

**FINDINGS OF FACT**

The Appeals Board finds the following facts relevant to the issues presented by UEF and Sharpe’s motions for review. The Appeals Board also adopts the facts set out in Judge George’s decision to the extent those facts are consistent with this decision.

For several years before Mr. Dorman’s accident, Sharpe maintained workers’ compensation insurance through Wasatch Crest, a company duly qualified to provide workers’ compensation insurance in Utah. Wasatch Crest went out of business in early 2002. Sharpe was forced to find a

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new workers' compensation insurance carrier, which brought Sharpe into contact with AEG, a professional employee organization.<sup>1</sup>

Effective May 1, 2002, Sharpe and AEG entered into a contract whereby AEG agreed to provide various employee-related services to Sharpe in return for periodic payments from Sharpe. Among AEG's obligations was its commitment to obtain workers' compensation insurance coverage for Sharpe's employees through an entity known as ABI. While the relationship between AEG and ABI is murky at best, it is undisputed that neither ABI nor AEG was authorized to provide workers' compensation insurance in Utah. Consequently, although Sharpe believed that AEG had arranged for workers' compensation insurance coverage, in fact neither Sharpe nor AEG was insured under any valid policy.

Sharpe became concerned about its workers' compensation coverage after AEG failed to provide proof of coverage. On its own, Sharpe purchased an insurance policy from an authorized and well-established insurance carrier. Sharpe's coverage under this policy became effective on July 20, 2002. Unfortunately, Mr. Dorman had suffered his work-related injuries on June 17, 2002, approximately one month before Sharpe's policy became effective.

Sharpe is solvent, continues to do business, and is financially able to pay Mr. Dorman's workers' compensation benefits.

**DISCUSSION AND CONCLUSIONS OF LAW**

As already noted, neither Sharpe nor UEF disputes Mr. Dorman's right to workers' compensation benefits. They do, however, disagree as to their relative liability for those benefits. It is necessary to turn to the provisions of the Utah Workers' Compensation Act to resolve these questions.

Sharpe's liability. Section 34A-2-401(2)(a) of the Act places responsibility for paying an injured worker's benefits "on the employer and the employer's insurance carrier." In this case, despite Sharpe's efforts to maintain workers' compensation insurance coverage, no insurance was in force on the date of Mr. Dorman's accident and injury. Consequently, pursuant to §34A-2-401(2)(a), primary liability for Mr. Dorman's workers' compensation benefits falls entirely on Mr. Dorman's "employer."

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<sup>1</sup> Professional employee organizations ("PEOs"), sometimes referred to as "employee leasing companies," enter into contracts with employers ("client companies") whereby responsibilities for the client company's employees are divided between the PEO and the client. Typically, the client company retains direct control over its employees' day-to-day work while the PEO handles payroll, fringe benefits, payroll taxes and insurance. In return, the client company pays the PEO a periodic fee.

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The identity of Mr. Dorman's "employer" is somewhat confused by the employee leasing arrangement between Sharpe and AEG, which divided the functions and responsibilities usually attributed to an "employer" between Sharpe and AEG. However, § 34A-2-103(3)(a) of the Act addresses that specific issue as follows (emphasis and footnote added):

The **client company** in an employee leasing arrangement . . . **is considered the employer** of leased employees and **shall** secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1) or (2) and commission rules.<sup>2</sup>

Thus, by virtue of § 34A-2-103(3)(a), Sharpe remained Mr. Dorman's employer for purposes of the Act's coverage requirements, despite Sharpe's employee leasing arrangement with AEG. It therefore remained Sharpe's obligation to obtain workers' compensation coverage and to pay Mr. Dorman's benefits in the absence of such coverage.

The Appeals Board notes that, in other proceedings before the Commission, AEG accepted liability for Mr. Dorman's benefits. However, the fact that AEG agreed to pay benefits does not eliminate Sharpe's statutory obligation, as Mr. Dorman's employer, to pay those benefits. The Appeals Board therefore finds that AEG and Sharpe have concurrent liability for Mr. Dorman's medical expenses and disability compensation. Mr. Dorman is entitled to enforce his right to such benefits directly against Sharpe.

UEF liability. Sharpe argues UEF should be ordered to pay Mr. Dorman's benefits in the first instance, subject to a right to seek reimbursement from Sharpe. However, this argument is contrary to § 34A-2-704 of the Act, which creates the UEF and defines its purpose as follows:

- (1)(a) There is created an Uninsured Employers' Fund. The fund has the purpose of assisting in the payment of workers' compensation benefits to any person entitled to them, **if that person's employer:**
- (i) is individually, jointly, or severally liable to pay the benefits; and
  - (ii) (A) **becomes or is insolvent;**  
(B) **appoints or has appointed a receiver;** or  
(C) **otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities.**

With respect to the benefits due Mr. Dorman, none of the three preconditions identified in the foregoing statute exist--Sharpe is not insolvent, in receivership, or otherwise unable to pay Mr. Dorman's benefits. Consequently, the facts of this case do not trigger UEF liability, and UEF has no

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<sup>2</sup> Subsection 34A-2-201(1) and (2) referenced in § 34A-2-103(3)(a) authorize employers to satisfy their obligation to provide workers' compensation coverage by purchasing insurance from the Workers Compensation Fund or from some other authorized workers' compensation insurance carrier.

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obligation to pay Mr. Dorman's benefits.

**ORDER**

The Appeals Board concludes that Sharpe is liable for Mr. Dorman's benefits and that the UEF has no liability for those benefits. The Appeals Board therefore strikes all references to the UEF from paragraphs 52 and 54 of Judge George's order, found at page 16 of his decision. The Appeals Board also strikes paragraph 55 in its entirety from Judge George's order. The remaining provisions of the order remain in effect. It is so ordered.

Dated this 8<sup>th</sup> day of April, 2008.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.